

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3634 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BAI SAVITABEN DAUGHTER OF BALKABHAI RAISINGBHAI

Versus

SHANKERBHAI NAIKABHAI & ORS.

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Appearance:

MR AJ PATEL for Petitioner

MR JM PATEL for Respondents No. 1 to 3

None present for Respondent No.4

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/06/97

ORAL JUDGEMENT

1. The petitioner challenges by this Special Civil Application, the order, annexure 'A' of the Assistant Collector, Dahod, in Fragmentation Act Case No.2791/83 dated 6-11-1984 and that of the Secretary (Appeals), Revenue Department dated 17th June, 1986 in revision application No.SRD./Con./17/85. Under the later order, the revisional authority confirmed the order of the

Assistant Collector, Dahod dated 6-11-1984.

2. The facts of the case, in brief, are that the petitioner purchased two agricultural lands bearing Survey Nos. 180/1 and 180/2 by registered sale deed executed on 2-6-1982 and 14-6-1982 by the holders of those lands in her favour. As both these lands were fragment under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, (hereinafter referred to as the Act, 1947) the Assistant Collector, Dahod, initiated proceedings under sec.7 read with sec.9 of the Act, 1947, for the purpose of impeaching the transactions aforesaid. The proceedings have been initiated on a complaint filed by the respondent No.3 herein. The respondent No.3 is the second purchaser of the land of survey No.180/2. After notice to the petitioner and hearing her, the Assistant Collector, Dahod, under the impugned order held that the sale of the aforesaid two lands in favour of the petitioner has been made in contravention of the provisions of the Act, 1947, and the same were not acceptable under sec.9 of the Act, 1947. The petitioner challenged that order of Assistant Collector, Dahod, by filing a revision application before the Secretary (Appeals), Revenue Department, Ahmedabad, and under the order annexure 'B' dated 17-6-1986, the same came to be dismissed. Hence, this Special Civil Application.

3. The learned counsel for the petitioner contended that both the authorities below have not considered that though these two lands were fragment, but nevertheless by purchase of these two lands by the petitioner, the purpose and object of the Act, 1947, has been fulfilled. In fact, the said transactions were in respect of the same survey number and the land was purchased by one and the same person, and therefore, two fragments were consolidated which would advance the object of the Act further. It has next been contended that the next sale of the survey No.180/2 made by the holder of the same in favour of the respondent No.3 is illegal as he was not the party to the said transaction. The sale aforesaid was required to be ignored because it was not a sale in the eye of law.

4. On the other hand, the counsel for the respondents No.1 to 3 contended that both the authorities concurrently held that the sale of the two lands made in favour of the petitioner is in violation of the provisions of the Act, 1947, and as such, sitting under Article 227 of the Constitution, this Court should not interfere in the matter. It has further been contended

that the sale made in contravention of provisions of sec.9 of the Act, 1947, is void-ab-initio and it does not confer any right to the petitioner whatsoever.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. Both the authorities concurrently recorded a finding of fact that the land of survey Nos. 180/1 and 180/2 were fragments. It has further been held concurrently by both the authorities below that a notice under sec.6(2) of the Act, 1947, was also given in respect of these two fragments. So, it is a fact that the petitioner was knowing well that these two lands are fragment, and as such, he could not have entered into the transaction of the sale in respect of these lands. The petitioner having notice of this fact has entered into this transaction, and as such, he has incurred the liability of the consequences of the same. The contention advanced by the counsel for the petitioner that the sale of these two fragments to one and the same person has advanced the object and purpose of the Act, 1947, is difficult to accept. The purpose of the Act, 1947, is also that the person holding a fragment of land should be protected so that he may not be divested of the right in the lands. Normally such persons are the weaker and poor persons, and as such, they may in some compulsion transfer such lands. To continue these persons to be in possession of the land, the Act, 1947, has been enacted. The petitioner despite knowing well the position of law, has entered in this transaction, and as such, both the authorities below have not committed any illegality whatsoever in declaring these transactions to be contrary to the provisions of the Act, 1947 and passing the impugned orders. The law has to take its own course where the parties have entered into the transactions of the sale of agricultural lands which are prohibited under the Act, 1947.

7. This petition has been filed under Article 227 of the Constitution of India. The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 is a special Act. It has been enacted by the legislature for advancing socio-economic conditions of the holder of the small pieces of agricultural lands. Against the orders passed by the authorities under the said Act, the legislature has not provided any appeal or revision to this Court, and the intention is very obvious to give finality to the orders made under the aforesaid Act. In view of the findings of both the authorities below as well as the fact that the notice under sec.6(2) of the

Act, 1947, were given to the parties, this Court may not be justified in extending its jurisdiction under Article 227 of the Constitution of India in the present case. This Court under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardships or wrong decisions. The exercise of powers of this Court under Article 227 of the Constitution must be restricted to cases of grave dereliction of duties and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless this Court interferes in the matter. As stated earlier, the sale transactions of the two pieces of lands made in favour of the petitioner were contrary to the provisions of the Act, 1947, and as such, in case, the interference is made by this Court in this petition then this Court will give a recognition to the transactions of the sale of the lands in dispute in favour of the petitioner, which are contrary to the provisions of the Act, 1947. This Court sitting under Article 227 of the Constitution will not perpetuate any illegality. So, it cannot be said to be a case where any injustice would be done unless this Court interferes in the present case. Contrary to it, as stated earlier, the interference of this Court in this case would result in restoration of the sale transactions, which are contrary to the provisions of the Act, 1947.

8. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief granted by this Court stands vacated. No order as to costs.

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